रजिस्ट्री सं० डी० एल० – 33004/95 REGISTERED No. DL-33004/95

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 20] नई दिल्ली, बृहस्पतिवार, मई 18, 1995/वैशाख 28, 1917
No.20] NEW DELHI, THURSDAY, MAY 18, 1995/VAISAKHA 28, 1917

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 18th May, 1995 :—

BILL No. XXXIII OF 1995

A Bill to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and to supplement the criminal law.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (*1*) This Act may be called the Criminal Law Amendment Act, 1995. Short title and extent.

(*2*) It extends to the whole of India, and it applies also to —

(*a*) citizens of India outside India;

(*b*) persons in the service of the Government, wherever they may be; and

(*c*) persons on ships and aircraft registered in India, wherever they may be.

IIRS

Definitions.

2. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.

(*b*) "disruptive activity" has the meaning assigned to it in section 4, and the expression "disruptionist" shall be construed accordingly;

(*c*) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets obtained from the terrorist act includes proceeds of terrorism;

(*d*) "Special Court" means a Special Court constituted under section 8;

(*e*) "terrorist act" has the meaning assigned to it in sub-section (*1*) of section 3, and the expression "terrorist" shall be construed accordingly;

(*f*) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(*2*) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

PART II

PUNISHMENTS FOR, AND MEASURES FOR COPING WITH, TERRORIST AND DISRUPTIVE ACTIVITIES

Punishment for terrorist acts.

3. (*1*) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

(*2*) Whoever commits a terrorist act, shall,—

(*i*) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(*ii*) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(*3*) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(*4*) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(*5*) Any person who is a member of a terrorist gang or a terrorists organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Punishment for disruptive activities.

4. *(1)* Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of sub-section *(1)*, "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,—

(*i*) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(*ii*) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.—For the purposes of this sub-section,—

(*a*) "cession" includes the admission of any claim of any foreign country to any part of India; and

(*b*) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-section *(2)*, it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which—

(*a*) advocates, advises, suggests or incites; or

(*b*) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any disruptionist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Enhanced penalties.

54 of 1959.
4 of 1884.
6 of 1908.
20 of 1952.

5. *(1)* If any person with intent to aid any terrorist or disruptionist, contravenes any provision of, or any rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section *(1)* shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

Powers of investigating officers.

6. If an officer investigating an offence committed under this Act has reason to believe that any property in relation to which an investigation is being conducted is a property derived or obtained from the commission of any terrorist act and includes proceeds of terrorism, he shall, with the approval of the Superintendent of Police, make an order seizing

such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Special Court and a copy of such order shall be served on the persons concerned:

Provided that the investigating officer shall duly inform the Special Court within forty-eight hours of the attachment of such property and the said Court shall either confirm or revoke the order of attachment so issued.

Forfeiture of property of certain persons.

7. *(1)* Where a person has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Government free from all encumbrances.

(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him to pass an order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the Government free from all encumbrances.

(3) Where any shares in a company stand forfeited to the Government under this section, then, the company shall notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Government as the transferee of such shares. 1 of 1956.

PART III

SPECIAL COURTS

Special Courts.

8. *(1)* **The Central Government or a State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.**

(2) Where a notification constituting a Special Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section *(1)*, and a notification constituting a Special Court for the same area or areas or for the same case or class or group of cases has also been issued by a State Government under that sub-section, the Special Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Special Court by the State Government, shall have, and the Special Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases, and all cases pending before any Special Court constituted by the State Government shall stand transferred to the Special Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision thereon shall be final.

(4) A Special Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction in a Special Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment by a person appointed as a judge or an additional judge of a Special Court of the age of superannuation

under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(*8*) Where any additional judge or additional judges is or are appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

(*9*) A Designated Court constituted under sub-section (*1*) of section 9 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 for any area or areas or any case or class or group of cases shall be deemed to be a Special Court for the purposes of this Act. 28 of 1987

Place of sitting.

9. A Special Court may, on its own motion or on an application made by the Public Prosecutor, and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other then its ordinary place of sitting:

Provided that nothing in this section shall be construed to change the place of sitting of a Special Court constituted by a State Government to any place outside that State.

Jurisdiction of Special Courts.

10. (*1*) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under section 8.

(*2*) If, having regard to the exigencies of the situation prevailing in a State, the Central Government is of the opinion that—

(*a*) the situation prevailing in such State is not conducive to fair, impartial or speedy trial; or

(*b*) it is not likely to be feasible without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the judge of the Special Court or any of them; or

(*c*) it is not otherwise in the interests of justice,

it may, with the concurrence of the Chief Justice of India (such concurrence to be obtained on a motion moved in that behalf by the Attorney-General), transfer any case pending before a Special Court in that State to any other Special Court within that State or in any other State.

(*3*) Where the whole or any part of the area within the local limits of the jurisdiction of a Special Court has been declared to be, or forms part of, any area which has been declared to be a disturbed area under any enactment for the time being in force making provision for the suppression of disorder and restoration and maintenance of public order, and the Central Government is of opinion that the situation prevailing in the State is not conducive to fair, impartial or speedy trial within the State, of offences under this Act which such Speical Court is competent to try, the Central Government may, with the concurrence of the Chief Justice of India, by notification in the Official Gazette, in relation to such court (hereinafter in this sub-section referred to as the local court) a Special Court outside the State (hereafter in this section referred to as the specified court), and thereupon—

(*a*) it shall not be competent, at any time during the period of operation of such notification, for such local court to exercise any jurisdiction in respect of, or try, any offence under this Act;

(*b*) the jurisdiction which would have been, but for the issue of such notification, exercisable by such local court in respect of such offences committed during the period of operation of such notification shall be exercisable by the specified court;

(*c*) all cases relating to such offences pending immediately before the date of issue of such notification before such local court shall stand transferred on that date to the specified court;

(*d*) all cases taken cognizance of by, or transferred to, the specified court under clause (*b*) or clause (*c*) shall be dealt with and tried in accordance with this Act (whether during the period of operation of such notification or thereafter) as if such offences had been committed within the local limits of the jurisdiction of the specified court or, as the case may be, transferred for trial to it under sub-section (*2*).

Explanation 1.—A notification issued under this sub-section in relation to any local court shall cease to operate on the date on which the whole or, as the case may be, the aforementioned part of the area within the local limits of its jurisdiction, ceases to be a disturbed area.

Explanation 2.—For the purposes of this section, "Attorney-General" means the Attorney-General of India or, in his absence, the Solicitor-General of India or, in the absence of both, one of the Additional Solictors-General of India.

Power of Special Courts with respect to other offences.

11. (*1*) When trying any offence, a Speial Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(*2*) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

Public prosecutors.

12. *(1)* **For every Speical Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:**

Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases a Special Public Prosecutor.

(*2*) **A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Proceutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.**

(3) **Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause** *(u)* **of section 2 of the Code, and the provisions of the Code shall have effect accordingly.**

Procedure and powers of Special Courts.

13. *(1)* A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(*2*) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section *(1)* of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under sub-section *(2)* of section 10 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

Protection of witnesses.

14. *(1)* Notwithstanding anything contained in the Code, the proceedings under this Act may be held *in camera* if the Special Court so desires.

(2) A Special Court, if on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, satisfied that the life of such witness is an danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section *(2)*, the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgements or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed;

(d) that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person who contravenes any direction issued under sub-section *(3)* shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Trial by Special Courts to have precedence.

15. The trial under this Act of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

Power to transfer cases to regular courts.

16. Where, after taking cognizance of any offence, a Special Court is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeal.

17. *(1)* Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgement, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section *(1)* shall be heard by a bench of two judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment,

sentence or order including an interlocutory order of a Special Court.

(4) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfed that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

PART IV

MISCELLANEOUS

Modified application of certain provisions of the Code.

18. *(1)* Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause *(c)* of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),—

(a) the references to "fifteen days," "ninety days" and "sixty days," wherever they occur, shall be construed as references to "thirty days," "ninety days" and "ninety days," respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days;

Provided also that if the police officer making the investigation under the Criminal Law Amendment Act, 1995 requests for police custody from judicial custody of any person, on the basis of investigation, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.".

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that—

(a) the reference in sub-section *(1)* thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "State Government" shall be construed as a reference to "Central Government or the State Government, as the case may be".

(4) Section 366, 367, 368 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court subject to the modifications that the reference to "Court of Session", wherever occurring therein, shall be construed as the reference to "Special Court".

(5) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(6) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release.

(7) The limitations on granting of bail specified in sub-section (6) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Cognizance of offences

19. (1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police.

Officers competent to investigate offences under this Act.

20. Notwithstanding anything contained in the Code, no police officer below the rank,—

(a) in the case of the Delhi Special Police Establishment, of a Deputy Superintendent of Police or a police officer of equivalent ranks;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, of an Assistant Commissioner of Police;

(c) in any other case not relatable to clause (a) or clause (b), of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act.

Presumption as to offences under section 3.

21. (1) In a prosecution for an offence under sub-section (1) of section 3, if it is proved—

(a) that the arms or explosives or any other substances specified in section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall presume, unless the country is proved, that the accused had committed such offence.

(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any Financial assistance to a person accused of, or reasonably suspected of, an offence under that section, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section.

Saving.

22. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a court of ordinary criminal justice.

Overriding effect.

23. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Protection of action taken in good faith and punishment for corruptly or maliciously proceeding against any person under this Act.

24. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act.

(2) Any police officer exercising powers under this Act, who knows that there are no reasonable grounds for proceeding under this Act and yet corruptly or maliciously proceeds or threatens to proceed against any person, for an offence under this Act, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

STATEMENT OF OBJECTS AND REASONS

In the background of escalating terrorist and disruptive activities in several parts of the country, the Terrorist and Disruptive Activities (Prevention) Act, 1985 was first enacted on 23rd May, 1985. It was to remain in force for a period of two years. However, in the context of the continued terrorist violence in the country, the Terrorist and Disruptive Activities (Prevention) Act, 1987 was enacted. It was to remain in force for a period of two years, but was extended from time to time and is currently due to expire on 23rd May, 1995.

2. The constitutional validity of the said Act was upheld by the Supreme Court in Kartar Singh vs. State of Punjab. However, there has been criticism of certain provisions of the Act. The Government has consulted the Chief Ministers/Governors of States/Union territories and leaders of various political parties in this regard.

3. The question of extension or repeal of the Terrorist and Disruptive Activities (Prevention) Act, 1987 will have to be viewed in the light of the overall security environment of the country. The aid and assistance from across the border received by various terrorist groups in India has to be taken note of. Terrorism, which was initially confined to the States of Punjab, Jammu and Kashmir and North-East, has spread to several other parts of the country. The acquisition by terrorist groups of highly sophisticated weaponry, remote control devices, rocket launchers and professional training have added a new dimension to the problem.

4. In the light of the views expressed by the Chief Ministers and Governors as also the leaders of various political parties, the Government has decided not to extend the life of the Terrorist and Disruptive Activities (Prevention) Act, but to bring forward a new legislation for the prevention of and for coping with terrorist and disruptive activities.

5. Parliament is competent to enact the proposed legislation in view of article 248 read with entry 97 of List I of the Seventh Schedule to the Constitution. The proposed legislation also falls within the ambit of entry 1 of List I of the Seventh Schedule to the Constitution, namely, "Defence of India".

6. It is proposed, among other things, to provide—

(*a*) for punishment in respect of terrorist acts and disruptive activities;

(*b*) for forfeiture of property of persons convicted under the Act;

(*c*) for the constitution of Special Courts to try offences under the Act;

(*d*) for appeals from the orders of a Special Court to the High Court to be heard by a bench of two Judges;

(*e*) for the application of the Code of Criminal Procedure, subject to certain modifications;

(*f*) that no information about the commission of an offence under the Act shall be recorded by the police without the prior approval of the Deputy Superintendent of Police and that no Court shall take cognizance of an offence without the previous sanction of the Inspector General or Commissioner of Police;

(*g*) that no police officer below the rank of Deputy Superintendent of Police or an Assistant Commissioner of Police or a police officer of equivalent rank shall investigate offences punishable under the Act.

(*h*) for certain presumptions as to offences under clause 3 of the Bill;

(*i*) for punishment to any police officer, corruptly or maliciously proceeding or threatening to proceed against any person for an offence under this Act without reasonable grounds under the Act.

7. The Bill seeks to achieve the above objects.

S. B. CHAVAN.

FINANCIAL MEMORANDUM

Clause 8 of the Criminal Law Amendment Bill, 1995 provides for the constitution of Special Courts by the Central Government or the State Government and also for appointment of judges and additional judges of those Courts. Clause 12 of the said Bill provides for appointment of Public Prosecutor, Additional Public Prosecutor by the Central Government or the State Government, as the case may be.

2. The expenditure towards the setting up of Special Courts by the State Governments and towards salary and allowances of the judges, Public Prosecutors and the staff of such Courts will be defrayed out of the Consolidated Fund of the States concerned. The expenditure towards setting up of Special Courts by the Central Government in any State or Union Territory will be met out of the Consolidated Fund of India. The likely expenditure on each Special Court and on the salary and allowances of the Judges, Public Prosecutors, Additional Public Prosecutors, staff, etc., over a period of six months is expected to be about Rs. 12 lakhs out of which Rs. 6 lakhs would be of a recurring nature and Rs. 6 lakhs of a non-recurring nature. As it is not possible at this stage to visualise the number of such Courts that may have to be established, it is, therefore, not possible to give an estimate of actual expenditure that may have to be incurred on this behalf.

3. No other recurring or non-recurring expenditure is involved.

V. S. RAMA DEVI,
Secretary-General.

Published by the Secretary-General, Rajya Sabha under rule 68 of the Rules of Procedure and Conduct of Business in the Rajya Sabha.